

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9387 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KALYANMAYI ASHAPURI EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MS MAMTA R VYAS for Petitioner

MR VM PANCHOLI for Respondent No. 1

MR DAVE for MR AD OZA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/05/2000

ORAL JUDGEMENT

#. On one hand the State Government and its officers talk for imparting education in the rural areas in the state and on the other hand when the petitioner approached to them to permit it to run Ramdev Uttar Buniyadi Ashram Shala its application has been rejected. This bureaucratic approach of the officers of State of Gujarat results in number of litigations in this court. The approach of the officer of the State Government should have been justice oriented and to see that rural population of this country is not denied of education merely because the trust which earlier running the school has decided to close the same.

#. The petitioner is a Trust formed with an aim to impart education to the Amsaran and nearby villages. The Rang Avadhoodh Seva Mandal was running the school in the name Ramdev Uttar Buniyadi Ashram Shala in the area. It has on 12.8.93 decided to close the said school. The petitioner showed his willingness to run the said school and accordingly made an application to the respondent No.2 for granting permission to it to run the said school. As usual, this application was not granted which gave rise to a cause to the petitioner to file Special Civil Application 9056 of 1993 in the court.

#. The Rang Avadhoodh Seva Mandal decided to run the school and, therefore, the permission was granted to it by respondent No.2 on 28.12.93. The said Trust sought permission second time to close the school and it was permitted to do so by the concerned officer. The petitioner applied to the respondent No.2 this time also to grant permission to run the said school. This time also it was not granted. The petitioner filed a writ petition before this Court being Special Civil Application No.6804 of 1996, which came to be decided by the court and the respondent No.2 was directed to decide the representation dated 1.6.95 of the petitioner within two months from the date of receipt of the writ. On 29.1.97 the petitioner made another representation along with the aforesaid order of the court. That representation was followed by the reminders but till June, 1997 nothing has been done by the respondent No.2. On 24.7.97 the respondent No.2 passed an order rejecting the application of the petitioner for handing over the management of the said school on the ground that the registration of the school stood cancelled since 3.6.95. That order of the respondent was carried by the petitioner in appeal before the respondent No.1, which came to be rejected on 12.12.97. This appeal was rejected only on the ground that since registration of school was cancelled it is not maintainable. Hence this

petition.

#. Mrs. Vyas, learned counsel for the petitioner vehemently contended that this approach of the respondents is wholly perverse. Not only the approach is perverse but it is contrary to the basic conception, object and purpose of the Gujarat Secondary Education Act, 1972. In her submission this bureaucratic approach of the respondent Nos. 1 and 2 has resulted in denial of educational facilities to the rural peoples. It has next been contended that the respondents have not considered the provisions as contained in Subsection 11 of Section 31 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as "Act"). The learned counsel for the petitioner submits that even if it is taken that the registration of school which earlier run by Rang Avadhoodh Seva Mandli was cancelled still on this ground it is not correct on the part of the respondents to deny the permission to the petitioner to run the school. Either the name of the school could have been reentered or fresh registration could have been granted to the petitioner.

#. During the course of arguments on being asked by the court the learned counsel for the petitioner fairly submitted that the petitioner has no objection in case subject to certain condition the permission is being granted to the petitioner to run the trust-school.

#. The learned counsel for the respondent has supported the orders passed by the respondents.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for parties.

#. I find sufficient merits in the contention of the learned counsel for the petitioner that both the respondents have not correctly appreciated the provisions of the Act, aforesaid. Equally the contention of the learned counsel for the petitioner that even if the registration of school is cancelled, the fresh registration could have been given in the name of the petitioner, is full of substance and merits. In the concerned rural area the respondent No. 1 and 2 at one point of time find it necessary to grant registration for secondary school. A trust was granted permission to run a secondary school in concerned rural area. That trust could not manage to run the school and decided to close down the same. The permission to close down the school was granted by the authority concerned. Again the Trust has prayed for grant of permission to run the school

which was granted but this time also the trust could not manage to run the school. As a result of which on its application, second time the school was closed. On both the occasions the petitioner applied for grant of permission to run the school and the same was declined.

#. Section 31 of the Act provides that no person shall impart secondary education through a school unless such school is registered under provisions of this Act. Subsection (4) of Section 31 of the Act makes a provision for entering the name of the school in register on the application of a person, who desires to impart secondary education by establishing a school. However, the application is to be filed in such form as prescribed and also to pay fee as may be prescribed. This registration of school may also be subject to the fulfillment of the conditions prescribed by the Board. Subsection (8) of Section 31 of the Act makes provision that the registered school shall be given a certificate of registration in the prescribed form. Subsection (9) of Section 31 of the Act empowers the authority concerned to include the name in the register for a period as may be specified or permanently. Subsection (11) & (12) of Section 31 of the Act are relevant for the decision of this writ petition and the same are produced and read as under :-

Subsection (11) of Section 31 :-

The Board may, on sufficient cause being shown,
direct at any time that the name of the school so removed shall be reentered in the register on such condition and on payment of such fee as may be prescribed and on such further conditions as the Board may deem fit to impose.

Subsection (12) of Section 31 :-

Where the name of any registered school is removed from the register under subsection (9) the certificate of registration issued to the person in charge of the management thereof, shall be deemed to have been cancelled and such person shall forthwith surrender the certificate to the Board or to an officer authorised by the Board in this behalf. The cancellation of certificate of registration shall be notified by the Board in the Official Gazette and in such newspapers as the Board may select.

##. The respondent No.2 is empowered under subsection

(11) of Section 31 of the Act on sufficient cause being shown, direct at any time to re-enter and register the name of the school so removed on such condition and on payment of such fees as may be prescribed and such further conditions as the Board may deem fit to impose. It is true that under subsection (12) of Section 31 of the Act where the name of the registered school is removed from the register under subsection (9) of Section 31 of the Act the certificate of registration issued to a person in-charge of the management thereof shall be deemed to have been cancelled. It further provides that such person shall forthwith surrender the certificate to the Board or to an officer authorised by the Board in this behalf. The cancellation of the certificate of registration of the school has to be notified by the Board in Official Gazette and in such newspapers as the Board may select. In case the name of the school is removed from the register and where the earlier management of the school, which was running the school or some other person in that area, if applies for re-entering of the name of the school in the register, the respondent No.2 is conferred with wide powers to permit the same on such condition and on payment of such fees as may be prescribed. Here, the petitioner after closure of the school applied to the respondent No.2 for grant of permission to it to run the school. Meaning thereby, for re-entering the name of the school in the register. This application is to be considered on merits. This re-entry of the name of the school, so removed, is not only permissible on the application of the erstwhile management but it can also be permitted on the application of any other trust or the person. Ultimately the aim and object of the Act is to impart secondary education and for which who imparts is not material. If a case is made out and cause is being shown then the application filed by the person other than erstwhile management of the closed school, the name of the school can be reentered in the register subject to the conditions as put and on payment of the prescribed fees. Subsection 12 of Section 31 of the Act no doubt makes a provision for deemed cancellation of the registration. But it nowhere provides that once certificate of registration of school is cancelled even on showing sufficient cause its name cannot be reentered in the register. That is not the meaning of subsection (12) of Section 31 of the Act nor it can be read in such way and manner in which it is read and decided by authorities. Reading of subsection (12) of Section 31 of the Act in that way what it has been done in the present case by the authorities will render subsection (11) nugatory. It is a settled position of law of

interpretation that a provision in a statute should not be read in a way which results in making redundant other provision of the Act. An application filed for the re-entry of the name of the school in register is maintainable under subsection (11) of Section 31 of the Act. On grant of the same by competent authority the certificate of registration, which by virtue of deeming provision stood cancelled shall stand revived and accordingly, it may be notified in the official gazette or newspaper, as the Board may select.

##. In the case in hand, the whole approach of the respondent Nos. 1 and 2 is certainly perverse. The learned counsel for the petitioner, on being put by the court that in case the petitioner does not demand grant-in-aid to run the school, the court may give direction to respondent No.2 to consider its application afresh and grant necessary permission to it to run the school by re-entering the name of school in the register, very fairly states that the petitioner has no objection in case such condition is imposed by the Board.

##. In the result, this Special Civil Application succeeds and the same is allowed and the order of the respondent Nos. 1 and 2 at Annexures F and G dated 24.7.97 and 12.12.97 are quashed and set aside. The respondent No.2 is directed to consider the application of the petitioner afresh for grant of permission to run the closed school, Ramdev Uttar Buniyadi Ashram Shala, in accordance with law and the observations made in the judgment and to re-enter the name of the closed school in the register on such conditions, and on payment of fees, if any, as prescribed. The respondents are free to impose one of the conditions that at least for 5 full sessions the petitioner will not claim any grant-in-aid for this school in addition to the other conditions subject to which it propose to grant this permission to the petitioner. The rule is made absolute accordingly. The respondent-Board is directed to pay Rs.2,000/= to the petitioner towards costs of this petition.

(S.K.Keshote, J.)

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